

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

FIBER TECHNOLOGIES NETWORKS, L.L.C.
140 Allens Creek Road
Rochester, NY 14618

Complainant,

v.

TOWN OF SHREWSBURY ELECTRIC
LIGHT PLANT
100 Maple Avenue
Shrewsbury, MA 01545-5398

Respondents.

D.T.E. 01-70

**REPLY OF FIBER TECHNOLOGIES NETWORKS, L.L.C. TO
SHREWSBURY'S ELECTRIC LIGHT PLANT RESPONSE TO APPEAL FROM
HEARING OFFICER'S RULING ON SHREWSBURY ELECTRIC LIGHT PLANT'S
MOTIONS TO COMPEL DISCOVERY**

Fiber Technologies Networks, L.L.C. ("Fibertech") submits this brief reply to points raised in the response filed by Shrewsbury's Electric Light Plant ("SELP") to appeal dated February 21, 2002 from Hearing Officer's ruling on SELP's motions to compel discovery responses by Fibertech. In that reply, SELP argues that the discovery at issue is necessary to determine "the nature of Fibertech's business." But there is no dispute that the nature of this business is the provision of dark fiber, and SELP's denial of access to its poles is based on this premise. *E.g.*, Response of Shrewsbury's Electric Light Plant ¶¶ 5, 8 (filed Sept. 17, 2001) (Fibertech's "dark fiber is not capable of transmitting intelligence ... dark fiber is not an 'attachment' ...").

The discovery that SELP seeks is much more than the nature of the business; it seeks to determine the terms and conditions of that business in other states, the extent of construction, the identities and locations of customers. While SELP contends that Fibertech points to leases and agreements “as a proxy for ‘licensee’ status,” that is not the case. On the contrary, if Fibertech points to something as a “proxy” for “a licensee status,” it is the filing of its Statement of Business Operations and tariffs with the Department. It is SELP, not Fibertech, that is attempting to make leases and agreements a proxy for “a licensee status,” without explaining the basis for such a proxy.

With regard to the letters from customers Fibertech has submitted, Fibertech duly notified its customers of the Hearing Officer’s Order consistent with its non-disclosure agreements with these customers. They have responded accordingly, and Fibertech considers itself obligated to its customers to submit these. Although SELP states that these letters were filed the day after the deadline for submitting an appeal, and hard copies in fact were filed with the Department on February 20, 2002, the appeal itself was timely submitted and the letters filed electronically and served on SELP on February 19, 2002.

Respectfully submitted,

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